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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

In re:

MICHAEL HEILBRON,

Debtor.

BENJAMIN PLAZA, JR.,  
Chapter 7 Creditor

Plaintiff.

v.

MICHAEL HEILBRON,

Defendant.

Chapter 7

Case No. 1-18-42486 (ESS)

**LOCAL RULE 7056-1 STATEMENT**

Adv. Proc. No. 1-18-01055 (ESS)

Plaintiff, BENJAMIN PLAZA, JR., movant, by and through his counsel, Eric E. Rothstein, sets forth the following as and for his statement of material facts on motion for summary judgment pursuant to Local Rule 7056-1:

1. On June 28, 2008, debtor assaulted creditor.
2. As a result of said assault, debtor was arrested and charged in Queens Criminal

Court with:

- a. Penal Law § 120.05-1 Assault in the Second Degree
- b. Penal Law § 120.05-2 Assault in the Second Degree
- c. Penal Law § 120.00-1 Assault in the Third Degree
- d. Penal Law § 240.26-1 Harassment in the Second Degree

Exhibit A.

3. All of the above charges require intent.

4. On February 9, 2009, debtor plead guilty to Penal Law § 120.00, Assault in the Third Degree, and was sentenced to a Conditional Discharge requiring him to complete a 12 week anger management program and perform 5 days of community service and was issued an Order of Protection in favor of creditor. Exhibits B.

5. During his plea allocution, debtor admitted that he knowingly assaulted creditor. *Id.*

6. As a result of the assault, creditor suffered a mandible fracture to his jaw requiring open reduction and internal fixation. Exhibit C.

7. On March 30, 2009, creditor commenced an action against debtor in Supreme Court, Queens County, sounding in assault and battery. Exhibit D.

8. Said complaint alleges that debtor acted intentionally. *Id.*

9. Debtor defaulted and following an inquest, the Court entered a judgment against him on November 18, 2009, in the principal amount of \$125,000 plus costs and accrued interest. Exhibits E and F.

10. On September 15, 2016, debtor, through counsel, filed a motion to vacate the default judgment. Exhibit G.

11. In support of his motion to vacate his default, defendant's attorney alleged debtor had a justification defense. *Id.*

12. Debtor did not allege justification in his affidavit in support of the motion. *Id.*

13. On January 4, 2017, the Court entered a decision denying debtor's motion to vacate the judgment. Exhibit H. The decision, in part, held that debtor failed to demonstrate a meritorious defense to the action. *Id.*

14. Debtor did not appeal the decision.
15. New York does not recognize a negligent assault cause of action.
16. Under New York law, civil assault is only an intentional tort.

Dated: New York, New York  
December 20, 2018

s/ Eric E. Rothstein

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### CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2018, a copy of the foregoing 7056.1 statement was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: New York, New York  
December 20, 2018

s/ Eric E. Rothstein  
Eric E. Rothstein  
Attorney for Benjamin Plaza, Jr., Creditor  
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